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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/813,587
Filing Date: March 31, 2004
Appellant(s): STEIN ET AL.

Vincent M. DeLuca
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 16th, 2008 appealing from the Office action mailed April 16th, 2008.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims invoke 35 U.S.C. 112, sixth paragraph, in several instances with use of “means for” language, however the specification does not provide support for the “means for” language used in the claims. For example, claim 1 recites “means for loading”, “means for identifying”, and “means for moving”. The specification does not generally recite any of the above “means for” phrases, nor does it provide for any specific structure that corresponds to any of the above “means for” phrases, as well as the other “means for” recitations throughout dependent claims 3-5.

Further, this interpretation is proper since the claim limitation recites “means for” language, and the “means for” is not modified by sufficient structure for achieving the specified function. A means-plus-function limitation recites a function to be performed rather than definite structure or materials for performing that function. For claims falling under 35 U.S.C. 112, sixth paragraph, Examiners are required to construe claims as covering the corresponding structure, material, or acts described in the specification and equivalents thereof, see *In re Donaldson Co.*, 29 USPQ2d 1845 (Fed. Cir. 1994). However, the specification does not set forth the corresponding structure. Thus, it is

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unclear and indefinite what structure Applicant is intending to encompass with the “means for” limitations recited throughout claims 1 and 3-5.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to independent claim 1, the functions of the computer controller with respect to the test vessels are indefinitely recited. Claim 1 does not establish that test vessels are a positive element of the analyzer. Claim 1 only recites a means for loading samples into one or more test vessels. Such a recitation points to a structure for loading samples, followed by a recitation that is drawn to a capability of such loading-structure. Such that the test vessels are not positively established in the claims, the computer controller's functions in conjunction with such vessels are indefinitely recited. Likewise, in the method of independent claim 13, the steps of using the computer controller with respect to the test vessels is indefinitely recited. The method of claim 13 does not establish the test vessels as positive elements of the claim. Does Applicant intend to recite a step of providing a plurality of test vessels?

Claims 2 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 recites that the controller determines an optimized launch of test sequence for each sample based on any samples currently

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under test and any sample yet to be tested. It is unclear what constitutes an “optimized” launch of test sequence. Claim 2 currently recites that it is based on any samples currently under test and any samples yet to be tested. Such a recitation covers all samples and provides no clarification to the optimized launch of test sequence. Further, it is unclear how the controller determines a launch of test sequence for a sample that is already under test, and how a time and order for the tests to be launched is achieved with samples that are already under test. The claim language to the controller’s determination of a launch of test sequence is unclear with respect to the two types of samples. How does the controller determine an optimized launch of test sequence for the samples? Additionally, the phrase “a launch of test sequence” is unclear. Does Applicant intend to recite, “a launch of a test sequence” or “a launch of test sequences”? This is similarly seen in claim 14, absent the term “optimized”.

Claims 13-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is meant by, “moving each of said plurality of test vessels along its respective path determined in said using a computer controller to determine step”. The step is recited in an unclear and confusing manner. Does Applicant intend for this step to merely to be a step of actual movement according to the path determined? Does Applicant intend some other control of movement? Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 7, 9, 13, 14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanawa et al. (5,972,295), hereafter Hanawa.

Hanawa discloses an automatic analyzing apparatus. Hanawa discloses a tray having many aligned sample racks 2 is loaded in a rack supply unit 1 (lines 22-30, col. 4, fig. 1). Hanawa also discloses a transfer line 3 that is composed of a belt line rotating upward and downward, and the transfer operation is controlled so that the sample rack stops at predetermined positions. Hanawa also discloses that the rack identifying unit 4 has a bar-code reader 5 for identifying a destination of the sample rack that comes to the entrance of the transfer line. Hanawa further discloses that the identifying apparatus may also be provided at the analyzing units 6, 14 (resources) or at the exit of the transfer line in addition to being at the rack identifying unit. Hanawa further discloses that the content of the bar-code label 87 of the rack and the bar-code label 86 of the sample containers are transferred to a control unit 50, and the rack kind, the kind of analysis item instructed to each of the sample containers, and other information is compared with analysis information pre-instructed from an operating unit 55. Based on the compared results, the destination of the sample rack 2 is determined by the control unit 50 and stored in memory for processing of the sample rack to be performed later

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(lines 38-60, col. 4, fig. 1). Hanawa discloses that the analyzer units 6 or 14 along the transfer line comprise a sampling area 8 or 16 for receiving a sample rack and returning the sample rack after pipetting processing (lines 8-27, col. 5, fig. 1). Hanawa further discloses that the control unit 50 judges whether or not the sample racks require analysis of a particular analyzer (or of an additional analyzer if previously analyzed at analyzer 6) or if a sample rack is to be returned for additional analysis (or reexamination), and the rack is directed along the appropriate path(s) as judged by the control unit in each case (columns 5&6, fig. 1).

New Grounds of Rejection

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to independent claim 1, the functions of the computer controller with respect to the test vessels are indefinitely recited. Claim 1 does not establish that test vessels are a positive element of the analyzer. Claim 1 only recites a means for loading samples into one or more test vessels. Such a recitation points to a structure for loading samples, followed by a recitation that is drawn to a capability of such loading-structure. Such that the test vessels are not positively

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established in the claims, the computer controller's functions in conjunction with such vessels are indefinitely recited. Likewise, in the method of independent claim 13, the steps of using the computer controller with respect to the test vessels is indefinitely recited. The method of claim 13 does not establish the test vessels as positive elements of the claim. Does Applicant intend to recite a step of providing a plurality of test vessels?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-5, 8, 11, 12, 15-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanawa in view of Fritchie et al. (6,022,746), hereafter Fritchie.

Hanawa has been discussed above.

Hanawa does not disclose means for setting (determining) one or more resource saturation levels, and wherein the computer controller considers such resource saturation levels in determining the launch of test sequence. Hanawa also does not disclose means for modifying (modifying) one or more resource saturation levels and wherein such means for modifying uses historical information of tests previously performed. Hanawa also does not disclose that the computer controller manages (managing) allocation of the one or more resources to balance a workload across a set of duplicate resources, wherein such resources are duplicate wash stations.

Fritchie discloses an allocation method in an automated analyzer (abstract). Fritchie discloses a controller 14 for a plurality of instruments (resources), in which the controller 14 includes a user input device, such as a keyboard, a touch-responsive screen, a data carrier, and the like to enable a user to supply information, commands, etc. (means for setting and means for modifying are defined in the keyboard and other input devices in which a user may input data which may later be updated or modified by one of the input devices) to the controller and the instruments. Fritchie discloses an allocation method which results in achieving close to maximum throughput for the system 10. Fritchie discloses determining which tests are to be performed, and then determining the number of individual runs over a given time period is calculated or derived from experience. Fritchie further discloses that with the approximate equivalency determined, it is determined which tests, i.e. associated reagents, etc. are to be replicated or distributed across the instruments and to what magnitude. Fritchie

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discloses that tests are then assigned to each of the instruments (resources) while maintaining an equivalency of runs with respect to each instrument. Examiner asserts that such steps are taken as a result of operator input to the controller and the allocation that results implicitly supplies a resource saturation level to each of the instruments (resources) so as to supply test runs equivalently to all instruments. Examiner further asserts that such an allocation system/method shows a computer controller managing allocation of one or more resources to balance a workload across a set of duplicate resources, as in claims 11 and 20. Fritchie further discloses that it is possible for an operator to modify any portion of the allocation method at any suitable time. Fritchie further discloses that the operator can also define or input test kit sizes, i.e. the number of tests that can be performed with a given kit, can also recall past map or create a new reagent map, or allow the operator to select an option such as increase throughput (columns 2-4+; figs. 1-3).

It would have been obvious to modify Hanawa to include means for setting (as in, a step of setting) resource saturation levels, of which such levels are used in determining the launch of test sequence such as taught by Fritchie in order to maximize efficiency of the system and thereby most-closely achieve maximum throughput.

It would have also been obvious to modify Hanawa to include means for modifying (as in, a step of modifying) resource saturation levels wherein one or more resource saturation levels use historical information such as taught by Fritchie in order to provide for a system/method in which a subsequent run may be undergone based

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upon the experience of a past run(s) so as to achieve an even higher percentage of maximum throughput.

It would have been similarly obvious to modify Hanawa to include a computer controller that manages (as in, a step of managing) allocation of the resources to balance a workload across a set of duplicate resources such as taught by Fritchie (the instruments in Fritchie may be said to be duplicates in that they are all capable of performing the same tests) in order to achieve close to maximum throughput and thereby perform as many tests as possible for a given time period.

With respect to claim 12, whereas Fritchie does not disclose the instruments as cleaning stations, Examiner asserts that the recitation of claim 12 is toward the function of the computer controller already recited in claim 11, and claim 12 is not directed toward further defining what the one or more resources comprise. Examiner asserts that it would be obvious to one of ordinary skill in the art to modify Hanawa by the disclosure of Fritchie to apply such workload balancing across duplicate resources of any type, including wash stations, for the same purpose of increasing efficiency in the system and thereby achieving a high percentage of maximum throughput.

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanawa in view of Mimura et al. (5,902,549), hereafter Mimura.

Hanawa has been discussed above.

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Hanawa does not disclose that the computer controller resolves one or more conflicts in resource allocation by selecting a group of next tests and shifting said group of next tests one test cycle until the one or more conflicts are resolved.

Mimura discloses an automatic analyzer system in which, when the reagent for inspecting liver function in one of the two analyzer units is to be short, the controller resolves such a conflict by selecting a group of next liver function tests and transferring a sample rack from the rack providing portion to the other analyzer unit (one test cycle unit over) (abstract; cols. 2&3+, figs. 1&4). Examiner asserts such liver function tests carried out at the second analyzer unit may be considered "next tests" as they are carried out following recognition of the conflict at the first analyzer unit, and limitations of claims 10 and 19 do not preclude such a "next test" from being the same type of test.

It would have been obvious to modify Hanawa so as to have a computer controller that resolves a conflict in resource allocation by selecting a group of next tests and shifting said group of next tests at least one test cycle until the conflict is resolved such as taught by Mimura in order to provide for continued examination such that the throughput and efficiency of processing is not completely compromised by a lack of reagents in one of the analyzer units.

(10) Response to Argument

Regarding Rejection I:

Appellant argues that the rejection of claims 1-12 under 35 USC 112, 2nd paragraph is improper and should be reversed. Appellant argues that the various "means for" recitations meet the definiteness requirement for 35 USC 112, 2nd paragraph.

Examiner asserts that the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1). (Emphasis added). Further, Examiner asserts that there should be clear support or antecedent basis in the specification and drawings for the terminology used in the claims. Usually, the original claims follow the nomenclature of the specification; but sometimes in amending the claims or in adding new claims, applicant employs terms that do not appear in the specification. This may result in uncertainty as to the interpretation to be given such terms. See MPEP 1302.05 and also 37 CFR 1.121(e) which requires substantial correspondence between the language of the claims and the language of the specification. Examiner notes that as the original claims of the Application contain the "means for" language, Applicant may amend the specification in such a manner to include the "means for" phrase, and in a way that delineates the list of materials or structures that provide for the various "means for" recitations in the claims.

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Examiner also notes that as Appellant argues that, first, the "means for loading..." would be understood by one of ordinary skill in the art, and by this Appellant points to disclosure of, "samples are loaded into the immunoanalyzer either from the sample rack or by an operator." Examiner notes that the recitation of "...from the sample rack" does not point to a possible structure or material for performing the "means for loading", but instead points to a destination. Further, Appellant points to figure 10 in which a disclosure to a pipetting station 203 is exemplified. These arguments are not clear as the first supposed set of "means for loading" are drawn to a previous destination, i.e. from the sample rack, or by an operator, and the second disclosure is drawn to a pipetting station. It is thereby unclear what provides for the "means for loading..."

Further, within Appellant's "Second" argument related to the "means for identifying tests to be performed...", the related disclosure does not have a direct correspondence to the claimed "means for" recitation. The related disclosure is drawn to a bar code reader, RF tag, or other means for identifying the samples, and not means for identifying the tests to be performed. Examiner asserts that a bar code would provide for encoding the tests to be performed, and such encoded information would be able to be read out by a bar code reader. Examiner asserts that the disclosure in the specification is still unclear with regards to the "means for identifying..." and clarification is required.

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Further, within the "Third" argument directed to the "means for moving...", Appellant's related disclosure does not draw a direct correspondence and requires clarification.

Further, with regards to Applicant's "Fourth" and "Fifth" arguments related to "means for setting..." and "means for modifying..." Applicant's related disclosure does not have a direct correspondence and is still unclear. Further, both related disclosures that Applicant provides as basis for both "means for setting" and "means for modifying" recitations are, in parts, drawn to the same list of structural elements. It is thereby unclear which element(s) of the disclosure relates to the "means for setting", and which relates to the "means for modifying", or if a duplicate structural element has been claimed. Clarification is required. As discussed above, the specification must provide antecedent basis for the "means for language" and delineate which list of materials provide for such "means for" recitations. Outside of a set of materials or structural elements that correspond to the various "means for" recitations, Applicant has provided an open-ended list of materials that may provide for the various "means for" recitations in the claims.

Regarding Rejection II:

Appellant argues that the rejection of claims 2 and 14 under 35 USC 112, 2nd paragraph is improper. Appellant argues that the specification explains, "[t]he dynamic controller will calculate test sequences for each of the samples based on resource and timing requirements and will launch the tests in an optimized sequence. Furthermore, the dynamic controller of the present invention permits accessing the

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samples in a randomized fashion, as opposed to a serial, one after the other, fashion. This allows for a controller to manage the varying time periods between entering samples through the selected assays. In this way, the time durations for the various types of tests being performed can be optimized.” Examiner argues that Appellant's arguments are not commensurate in scope with the claims. Claims 2 and 14 do not provide definite limitations to the controller determining an "optimized launch of test sequence". Claims 2 and 14 do not distinguish a run of test sequences from any other run of test sequences, so as to definitely establish what is meant by an “optimized launch of test sequence”. Claims 2 and 14 do not define an optimized launch of test sequence based on resource and timing requirements, and the recitations of claims 2 and 14 read on any normal processing of samples by the prior art to constitute an “optimized launch of test sequence”.

Regarding Rejection III:

Appellant argues that the rejection of claims 13-20 under 35 USC 112, 2nd paragraph is improper. The rejection of claims 13-20 under 35 USC 112, 2nd paragraph has been removed, with respect to the language “moving each of said plurality of test vessels along its respective path determined in said using a computer controller to determine step.”

Regarding Rejection IV:

Appellant argues that the rejection of claims 1-20 under 35 USC 102(b) over Hanawa (5,972,295) is improper.

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First, Appellant argues that Hanawa does not show a means for identifying tests to be performed on each of one or more samples. Appellant argues that bar code reader 5 of Hanawa merely determines “whether the sample rack carried is a sample rack which needs not to be reexamined or a general sample rack which may need to be reexamined.” Examiner argues that each sample container 85 has a bar-code label 86 in which the bar code reader 5 reads out the information on bar-code label 86, which information includes the rack kind and the kind of analysis item instructed to teach sample container. Thereby as the information is read off bar-code label 86, it provides where and for what analysis, samplings, and other transfers occur with each sample container (lines 31-60, col. 4).

Second, Appellant argues that Hanawa does not show that each of the tests is to be performed in a test vessel. Appellant argues that Hanawa removes the sample from the sample container for testing. Examiner first argues that Appellant has not positively recited test vessels as an element of the claims. Applicant has recited a means for loading samples into one or more test vessels. This recitation points to a structure for loading and the proceeding recitation is a capability of such structure and does not positively establish the test vessels as part of the device. Further, even as sample is pipetted from the sample containers for testing in Hanawa, such analysis is not being done in mid-air by Hanawa, as the samples are analyzed in reaction disk 10 (lines 41-50, col. 5).

Third and finally, Appellant argues that Hanawa does not show a computer controller that tracks the location of each test vessel. Appellant argues that Hanawa

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does not utilize test vessels. Appellant argues that Hanawa utilizes sample containers, from which the sample is removed for testing. Examiner argues that, as discussed above, the test vessels have not been positively established as elements of the device, and thereby Appellant has recited a computer controller. Examiner further argues that Hanawa discloses a computer controller and thereby such controller is capable of the recited functionalities. Additionally, Examiner asserts that Hanawa discloses that control unit 50 tracks the locations and controls movement of the sample containers (and sample racks, where the sample containers are located) through the conveyors and transfer/take-up mechanisms and determines paths between the resources (ie. further analysis units, pipetting mechanisms, return lines, etc...that are down the line in the process) for each sample container based on the tests identified to be carried out and on the results of each subsequent test (cols. 4-7, fig. 1).

Appellant further argues that claims 2 and 14 distinguish over Hanawa. Appellant argues that Hanawa does not disclose a computer controller which determines an optimized launch of test sequence as recited in claims 2 and 14. Examiner argues that claims 2 and 14 do not definitely establish an “optimized launch of test sequence”, such that the claims provide no recitation to differentiate a normal run of test sequences from any other run of test sequences. Claims 2 and 14 do not define an optimized launch of test sequence based on resource and timing requirements, or any sort of change in test sequence, such as having the controller bypass a certain analysis section, and the recitations of claims 2 and 14 read on any normal processing of samples by the prior art to constitute an “optimized launch of test sequence”. Thereby,

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the continued processing sequences of Hanawa undergone by way of the controller in Hanawa are said to read on the computer controller determining an optimized launch of test sequence as recited in claims 2 and 14.

Appellant argues that claims 6 and 7 distinguish over Hanawa. With regard to claim 6, Hanawa discloses determining a path each time a new test is to be performed as Hanawa discloses judging the sample racks for need of reexamination or not and paths the racks accordingly after analysis at the stations. With regard to claim 7, Hanawa discloses that it is programmed that the sample rack to be reexamined is transferred to the transfer line 3 in giving priority over the racks supplied from the rack supply unit 1. By doing so, the final analyzed result in regard to a sample of which analysis is started first can be obtained as early as possible (lines 45-64, col. 6).

Appellant argues that claims 9 and 18 distinguish over Hanawa. Examiner argues that the limitations of claim 9 do not further limit the structure and/or the computer controller processing functions with respect to the pathing defined in independent claim 1, so as to specifically provide for the time-reduction. Examiner argues that claim 9 supplies an implicit function of the analyzer of claim 1. The limitations of claim 9 provide a consequential output or result of the analyzer of claim 1. Examiner asserts that as Hanawa discloses the analyzer of claim 1, the device of Hanawa implicitly supplies such time reduction as recited in claim 9. Similarly with respect to claim 18, the method has not been further limited to further define the pathing so as to provide such relative time-reduction as claimed. Claim 18 recites that, "...said determining and moving step are performed so as to reduce a total time period...",

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however the “so as to” as herein recited does not provide any differentiation from that claimed in claim 13. Thereby, Examiner argues that as Hanawa discloses the method of claim 13, such carrying out of the process as by Hanawa implicitly supplies such a relative time-reduction.

Appellant further argues that claims 3-5, 8, 10-12, 15-20 distinguish over Hanawa. Appellant’s arguments with respect to claims 3-5, 8, 10-12, and 15-20 are moot in view of the new grounds of rejection, as discussed above. Appellant’s arguments are persuasive and newly found prior art has been applied against the claims.

Examiner further notes that claims 1-20 also have a new grounds of rejection, as discussed above, under 35 USC 112, 2nd paragraph.

Appellant’s arguments with respect to claims 10 and 19 rejected under 35 USC 102(b) over Hanawa are moot in view of the new grounds of rejection, as discussed above. Appellant’s arguments are persuasive and newly found prior art has been applied against the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Neil Turk

/Neil Turk/

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

Conferees:

/Jill Warden/

Supervisory Patent Examiner, Art Unit 1797\

/Glenn A Caldarola/

Acting SPE of Art Unit 1797